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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TOUCHTUNES MUSIC CORP.,

Plaintiff,

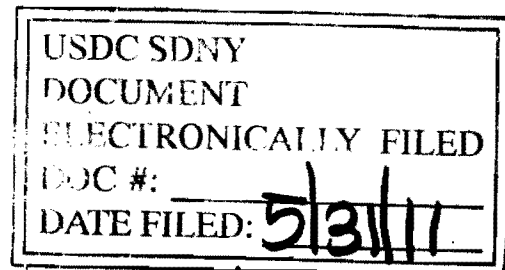
against

ROWE INTERNATIONAL CORP.,
ARACHNID, INC., AMI
ENTERTAINMENT, INC. and MERIT
INDUSTRIES, INC. d/b/a MERIT
ENTERTAINMENT,

Defendants.

Civil Action No. 07-cv-11450-RWS

Judge Robert W. Sweet



ARACHNID, INC.,

Counterclaim Plaintiff,

against

TOUCHTUNES MUSIC CORP.,

Counterclaim Defendant.

PROPOSED ORDER

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Based on the Stipulation of Noninfringement as to Certain Claims Based on Prior Claim Construction Rulings submitted by Arachnid, Inc. and TouchTunes Music Corp., and for the reasons stated therein, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Under the Court's construction of the phrase "a song selection means displayed on said visual screen, actuable by a user for retrieving and playing a signal representing a song selected from a plurality of songs stored in said jukebox," claims 1-7 of U.S. Patent No. 5,848, 398 (the "'398 Patent") have been found to be invalid;

2. Under the Court's construction of the phrase "adapted for," TouchTunes has not infringed any claim of U.S. Patent No. 6,397,189 (the "'189 Patent");
3. Under the Court's constructions of the phrases "adapted for" and/or "song record including song identity data comprising at least one of a song title, a song category, song address, song size, graphics address, graphics size, and play count," TouchTunes has not infringed any claim of U.S. Patent No. 6,381,575 (the "'575 Patent");
4. TouchTunes' claims against Arachnid seeking declaratory judgment that TouchTunes has not infringed the claims of the '189 and '575 patents, and that each claim of the '189 and '575 patents is invalid, void and/or unenforceable are dismissed without prejudice;
5. In view of Arachnid's stipulation that it will not assert a claim against TouchTunes alleging infringement of U.S. Patent No. 5,930,765 (the "'765 Patent"), TouchTunes' claims against Arachnid seeking a declaratory judgment that TouchTunes has not infringed the claims of the '765 patent, and that each claim of the '765 patent is invalid, void and/or unenforceable are dismissed without prejudice;

IT IS FURTHER ORDERED that:

1. Nothing in this Order shall preclude Arachnid from pursuing an appeal with regard to any issues of claim construction;
2. Nothing in this Order shall preclude Arachnid from asserting any claim alleging infringement of claims 1-7 of the '398 patent against TouchTunes if the construction of the phrase "a song selection means displayed on said visual screen, actuable by a user for retrieving and playing a signal representing a song selected from a plurality

of songs stored in said jukebox” in that patent or if the invalidity finding of any of those claims is modified on appeal;

3. Nothing in this Order shall preclude Arachnid from asserting any claim alleging infringement of the ‘189 Patent against TouchTunes if the construction of the phrase “adapted for” in that patent is modified on appeal;
4. Nothing in this Order shall preclude Arachnid from asserting any claim alleging infringement of claims 1-8 and 15-21 of the ‘575 patent against TouchTunes if the constructions of the phrases “adapted for” and “song record including song identity data comprising at least one of a song title, a song category, song address, song size, graphics address, graphics size, and play count” in that patent are modified on appeal;
5. Nothing in this Order shall preclude Arachnid from asserting any claim alleging infringement of claims 9-14 and 22-27 of the ‘575 patent against TouchTunes if the construction of the phrase “song record including song identity data comprising at least one of a song title, a song category, song address, song size, graphics address, graphics size, and play count” in that patent is modified on appeal;
6. Nothing in this Order shall preclude TouchTunes from asserting that TouchTunes has not infringed claims 1-7 of the ‘398 patent, and that each of claims 1-7 of the ‘398 patent is invalid, void and/or unenforceable, if the construction of the phrase “a song selection means displayed on said visual screen, actuable by a user for retrieving and playing a signal representing a song selected from a plurality of songs stored in said jukebox” in that patent is modified on appeal;
7. Nothing in this Order shall preclude TouchTunes from asserting that TouchTunes has not infringed the claims of the ‘189 patent, and that each claim of the ‘189 patent is

invalid, void and/or unenforceable, if the construction of the phrase "adapted for" in that patent is modified on appeal;

8. Nothing in this Order shall preclude TouchTunes from asserting that TouchTunes has not infringed claims 1-8 and 15-21 of the '575 patent, and that each of claims 1-8 and 15-21 of the '575 patent is invalid, void and/or unenforceable, if the construction of the phrases "adapted for" and "song record including song identity data comprising at least one of a song title, a song category, song address, song size, graphics address, graphics size, and play count" in that patent are modified on appeal;
9. Nothing in this Order shall preclude TouchTunes from asserting that TouchTunes has not infringed claims 9-14 and 22-27 of the '575 patent, and that each of claims 9-14 and 22-27 of the '575 patent is invalid, void and/or unenforceable, if the construction of the phrase "song record including song identity data comprising at least one of a song title, a song category, song address, song size, graphics address, graphics size, and play count" in that patent is modified on appeal; and
10. Nothing in this Order shall preclude TouchTunes from asserting that TouchTunes has not infringed the claims of the '765 patent, and that each claim of the '765 patent is invalid, void and/or unenforceable, if Arachnid asserts a claim against TouchTunes alleging infringement of the '765 Patent.

IT IS SO ORDERED:

Date: 5-31, 2011


Robert W. Sweet
United States District Court

